

# AUTOBYTEL INC

## **FORM 8-K** (Current report filing)

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Address	18872 MACARTHUR BLVD SUITE 200 IRVINE, CA 92612-1400
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) June 28, 2017



**Autobytel Inc.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

1-34761

(Commission File Number)

33-0711569

(IRS Employer Identification No.)

18872 MacArthur Boulevard, Suite 200, Irvine, California

(Address of principal executive offices)

92612-1400

(Zip Code)

Registrant's telephone number, including area code (949) 225-4500

Not Applicable

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## Item 1.01 Entry into a Material Definitive Agreement

On June 28, 2017, Autobyte Inc., a Delaware corporation (“**Autobyte**” or “**Company**”), entered into a Fifth Amendment to Loan Agreement (“**Credit Facility 5th Amendment**”) with MUFG Union Bank, N.A., formerly Union Bank, N.A. (“**Union Bank**”), amending the Company’s existing Loan Agreement with Union Bank initially entered into on February 26, 2013, as amended on September 10, 2013, January 13, 2014, May 20, 2015 and June 1, 2016 (the existing Loan Agreement, as amended to date, is referred to herein collectively as the “**Credit Facility Agreement**”). The Credit Facility 5th Amendment amends (i) Section 1.1.1 of the Credit Facility Agreement to extend the maturity date of the Revolving Loan under the Credit Facility Agreement from April 30, 2018 to January 5, 2021; and (ii) Section 1.1.1.1 of the Credit Facility Agreement to extend the maturity date of the Standby L/C Sublimit under the Revolving Loan from April 30, 2019 to January 5, 2022. The Revolving Loan is evidenced by a Commercial Promissory Note dated as of June 28, 2017 (“**Revolving Loan Note**”).

Borrowings under the Revolving Loan will bear interest at either: (i) the LIBOR plus 2.5%; or (ii) the bank’s Reference Rate (prime rate) minus 0.5%, at the option of the Company. Interest under the Revolving Loan adjusts: (i) at the end of each LIBOR rate period (1, 2, 3, 6 or 12 months terms) selected by the Company, if the LIBOR rate is selected; or (ii) with changes in Union Bank’s Reference Rate, if the Reference Rate is selected. Borrowings under the Revolving Loan are secured by a first priority security interest on all of the Company’s personal property (including, but not limited to, accounts receivable) and proceeds thereof. Borrowings under the Revolving Loan may be used as a source to finance working capital, capital expenditures, acquisitions and stock buybacks and for other general corporate purposes. As of June 1, 2017, there was \$8.0 million in borrowings outstanding under the Revolving Loan.

The foregoing description of the Credit Facility Agreement, Credit Facility 5th Amendment, Revolving Loan Note and related documents is not complete and is qualified in its entirety by reference to (i) Loan Agreement dated as of February 26, 2013 by and between Autobyte Inc., a Delaware corporation, and Union Bank, N.A., a national banking association, as amended by First Amendment to Loan Agreement dated as of September 10, 2013, Second Amendment to Loan Agreement dated as of January 13, 2014, Security Agreement dated January 13, 2014, Commercial Promissory Note dated January 13, 2014 (\$9,000,000 Term Loan), and Commercial Promissory Note dated January 13, 2014 (\$8,000,000 Revolving Loan), which are incorporated herein by reference to Exhibit 10.4 to the Current Report on Form 8-K as filed with the SEC on January 17, 2014 (SEC File No. 001-34761); (ii) the Third Amendment to the Credit Facility Agreement, the Commercial Promissory Note dated May 20, 2015 (\$15,000,000 Term Loan) and the Commercial Promissory Note dated May 20, 2015 (\$8,000,000 Revolving Loan), which is incorporated herein by reference to Exhibits 10.1, 10.2 and 10.3 to the Current Report on Form 8-K filed with the SEC on May 27, 2015 (SEC File No. 001-34761); (iii) the Fourth Amendment to the Credit Facility Agreement dated June 1, 2016 (\$8,000,000 Revolving Loan), which is incorporated herein by reference to Exhibit 10.5 to the Quarterly Report on Form 10-Q filed with the SEC on August 4, 2016 (SEC File No. 001-34761); and (iv) the Fifth Amendment to Credit Facility Agreement and the Revolving Loan Note, copies of which are filed as exhibits to this Current Report on Form 8-K.

## Item 9.01 Financial Statements and Exhibits.

### (d) Exhibits

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| 10.1 | Loan Agreement dated as of February 26, 2013 by and between Autobyte Inc., a Delaware corporation, and Union Bank, N.A., a national banking association, as amended by First Amendment to Loan Agreement dated as of September 10, 2013, Second Amendment to Loan Agreement dated as of January 13, 2014, Security Agreement dated January 13, 2014, Commercial Promissory Note dated January 13, 2014 (\$9,000,000 Term Loan), and Commercial Promissory Note dated January 13, 2014 (\$8,000,000 Revolving Loan), which are incorporated herein by reference to Exhibit 10.4 to the Current Report on Form 8-K as filed with the SEC on January 17, 2014 (SEC File No. 001-34761); and amended by Third Amendment to Loan Agreement dated as of May 20, 2015, Commercial Promissory Note dated May 20, 2015 (\$15,000,000 Term Loan), and Commercial Promissory Note dated May 20, 2015 (\$8,000,000 Revolving Loan), which are incorporated herein by reference to Exhibits 10.1, 10.2 and 10.3 to the Current Report on Form 8-K filed with the SEC on May 27, 2015 (SEC File No. 001-34761); and amended by Fourth Amendment to Loan Agreement dated as of June 1, 2016, incorporated by reference to Exhibit 10.5 to the Quarterly Report on Form 10-Q filed with the SEC on August 4, 2016 (SEC File No. 001-34761) |
| 10.2 | Fifth Amendment to Loan Agreement dated as of June 28, 2017  |
| 10.3 | Commercial Promissory Note dated June 28, 2017 (\$8,000,000 Revolving Loan)  |
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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: June 29, 2017

AUTOBYTEL INC.

By: /s/ Glenn E. Fuller

Glenn E. Fuller, Executive Vice President, Chief Legal and Administrative Officer and Secretary

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## INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description of Document</u>
10.1	Loan Agreement dated as of February 26, 2013 by and between Autobyte Inc., a Delaware corporation, and Union Bank, N.A., a national banking association, as amended by First Amendment to Loan Agreement dated as of September 10, 2013, Second Amendment to Loan Agreement dated as of January 13, 2014, Security Agreement dated January 13, 2014, Commercial Promissory Note dated January 13, 2014 (\$9,000,000 Term Loan), and Commercial Promissory Note dated January 13, 2014 (\$8,000,000 Revolving Loan), which are incorporated herein by reference to Exhibit 10.4 to the Current Report on Form 8-K as filed with the SEC on January 17, 2014 (SEC File No. 001-34761); and amended by Third Amendment to Loan Agreement dated as of May 20, 2015, Commercial Promissory Note dated May 20, 2015 (\$15,000,000 Term Loan), and Commercial Promissory Note dated May 20, 2015 (\$8,000,000 Revolving Loan), which are incorporated herein by reference to Exhibits 10.1, 10.2 and 10.3 to the Current Report on Form 8-K filed with the SEC on May 27, 2015 (SEC File No. 001-34761); and amended by Fourth Amendment to Loan Agreement dated as of June 1, 2016, incorporated by reference to Exhibit 10.5 to the Quarterly Report on Form 10-Q filed with the SEC on August 4, 2016 (SEC File No. 001-34761)
10.2	Fifth Amendment to Loan Agreement dated as of June 28, 2017
10.3	Commercial Promissory Note dated June 28, 2017 (\$8,000,000 Revolving Loan)

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**FIFTH AMENDMENT  
TO LOAN AGREEMENT**

**THIS FIFTH AMENDMENT TO LOAN AGREEMENT** ("Fifth Amendment"), dated as of June 28, 2017, is made and entered into by and between **AUTOBYTEL INC.**, a Delaware corporation ("Borrower"), and **MUFG UNION BANK, N.A.**, formerly Union Bank, N.A. ("Bank").

**RECITALS** :

A. Borrower and Bank are parties to that certain Loan Agreement dated as of February 26, 2013, that certain Consent dated July 29, 2013, that certain First Amendment dated September 10, 2013, that certain Second Amendment dated January 13, 2014, that certain Third Amendment dated as of May 20, 2015, and that certain Fourth Amendment dated June 1, 2016 (collectively the "Agreement"), pursuant to which Bank agreed to extend credit to Borrower in the form of a revolving line of credit and two term loans.

B. Borrower has requested that Bank agree to amend the Agreement in certain respects related to the maturity dates of Borrower's Revolving Loan and Standby L/C Sublimit. Bank is willing to amend the Agreement, subject, however, to the terms and conditions of this Fifth Amendment.

**AGREEMENT** :

In consideration of the above recitals and of the mutual covenants and conditions contained herein, Borrower and Bank hereby agree as follows:

1. **Defined Terms**. Initially capitalized terms used herein which are not otherwise defined shall have the meanings assigned thereto in the Agreement.

2. **Amendments to the Agreement**.

(a) Section 1.1.1 of the Agreement, which relates to the **Revolving Loan**, is hereby amended by substituting the new maturity date of "January 5, 2021" for the existing maturity date of "April 30, 2018" appearing in line eight thereof.

(c) Section 1.1.1.1 of the Agreement, which relates to the **Standby L/C Sublimit**, is hereby amended by substituting the new maturity date of "January 5, 2022" for the existing maturity date of "April 30, 2019" appearing in line twelve thereof.

3. **Effectiveness of this Fifth Amendment**. This Fifth Amendment shall become effective as of the date hereof when, and only when, Bank shall have received all of the following, in form and substance satisfactory to Bank:

(a) A counterpart of this Fifth Amendment, duly executed by Borrower;

(b) A replacement Revolving Note superseding and replacing the existing Commercial Promissory Note dated May 5, 2015, which existing note is hereby cancelled and shall have no further force or effect ; and

(c) Such other documents, instruments or agreements as Bank may reasonably deem necessary in order to effect fully the purposes of this Fifth Amendment.

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4. **Ratification.**

(a) Except as specifically amended hereinabove, the Agreement shall remain in full force and effect and is hereby ratified and confirmed; and

(b) Upon the effectiveness of this Fifth Amendment, each reference in the Agreement to "this Agreement", "hereunder", "herein", "hereof" or words of like import referring to the Agreement shall mean and be a reference to the Agreement as amended by this Fifth Amendment,

5. **Representations and Warranties.** Borrower represents and warrants as follows:

(a) Each of the representations and warranties contained in Section 3 of the Agreement, as amended hereby, is hereby reaffirmed as of the date hereof, each as if set forth herein;

(i) Section 3.2. For the purposes of Section 3.2 of the Agreement, Exhibit A attached hereto constitutes the current schedule of Borrower's Affiliates delivered to Bank.

(ii) Section 3.8. Section 3.8 of the Agreement is hereby amended in its entirety to read as follows:

**3.8 Financial Statements** . Borrower's financial statements, including both a balance sheet at March 31, 2017, together with supporting schedule, and an income statement for the three (3) months ended March 31, 2017, have heretofore been furnished to Bank, are true and complete, and fairly represent Borrower's financial condition for the period covered thereby. Since March 31, 2017, there has been no material adverse change in Borrower's financial condition or operations.

(b) The execution, delivery and performance of this Fifth Amendment are within Borrower's corporate powers, have been duly authorized by all necessary corporate action, have received all necessary approvals, if any, and do not contravene any law or any contractual restriction binding on Borrower; and

(c) Except as previously disclosed to Bank, no event has occurred and is continuing or would result from this Fifth Amendment which constitutes an Event of Default under the Agreement, or would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

6. **Governing Law.** This Fifth Amendment shall be deemed a contract under and subject to, and shall be construed for all purposes and in accordance with, the laws of the State of California.

7. **Counterparts.** This Fifth Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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WITNESS the due execution hereof as of the date first above written.

“Borrower”

**AUTOBYTEL, INC.**

By: /s/ Jeff Coats  
Jeff Coats  
Chief Executive Officer

By: /s/ Glenn E. Fuller  
Glenn E. Fuller  
Executive Vice President, Chief Legal  
and Administrative Officer and Secretary

“Bank”

**MUFG UNION BANK, N.A.**

By: /s/ Gregory Dubnansky  
Gregory Dubnansky  
Vice President

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**Exhibit A**

Borrower Affiliates

Autobytel Dealer Services, Inc.

Dealix Corporation

Car.com, Inc.

Autotegrity, Inc.

Autoweb, Inc.

AW GUA USA, Inc.

AW GUA, Sociedad de Responsabilidad Limitada

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COMMERCIAL PROMISSORY NOTE  
(Base Rate)

Annie Au / SR / 17543

Debtor Name Autobytel Inc., a Delaware corporation		
Debtor Address 18872 MacArthur Blvd., Suite #200 Irvine, CA 92612-1448	Office 45061	Loan Number 055-716-185-7
	Maturity Date January 5, 2021	Amount \$ 8,000,000.00

\$ 8,000,000.00

Date June 28, 2017

FOR VALUE RECEIVED, on January 5, 2021, the undersigned ("Debtor") promises to pay to the order of MUFG UNION BANK, N.A. ("Bank"), as indicated below, the principal sum of Eight Million and 00/100ths Dollars (\$ 8,000,000.00), or so much thereof as is disbursed, together with interest on the balance of such principal from time to time outstanding, at the per annum rate or rates and at the times set forth below. Any letter of credit issued and outstanding in connection with this note shall result in reduction of the amount available to Debtor.

1. **INTEREST PAYMENTS.** Debtor shall pay interest on the last day of each month commencing July 31, 2017. Should interest not be paid when due, it shall become part of the principal and bear interest as herein provided. All computations of interest under this note shall be made on the basis of a year of 365 days, for actual days elapsed; provided that if an interest rate hedge is outstanding, then interest on this note shall be computed on the basis of a year of 360 days, actual days elapsed. Whenever any payment required hereunder falls due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, unless, in the case of amounts accruing interest based on the LIBOR rate, that day falls in a new calendar month, in which event such payment day shall be the next preceding Business Day. If any interest rate defined in this note ceases to be available from Bank for any reason, then said interest rate shall be replaced by the rate then offered by Bank, which, in the sole discretion of Bank, most closely approximates the unavailable rate.

(a) **BASE INTEREST RATE.** At Debtor's option, amounts outstanding hereunder in minimum amounts of \$ 100,000 shall bear interest at a rate, based on an index selected by Debtor, which is two and one-half percent (2.5%) per annum in excess of the LIBOR rate for the interest period selected by Debtor, acceptable to Bank. Notwithstanding the foregoing, if an interest rate hedge is outstanding, then Debtor shall be deemed to have selected the LIBOR rate for each relevant interest period.

No base interest rate may be changed, altered or otherwise modified until the expiration of the interest period selected by Debtor. The exercise of interest rate options by Debtor shall be as recorded in Bank's records, which records shall be prima facie evidence of the amount borrowed under either interest option and the interest rate; provided, however, that failure of Bank to make any such notation in its records shall not discharge Debtor from its obligations to repay in full with interest all amounts borrowed. In no event shall any interest period extend beyond the maturity date of this note.

To exercise this option, Debtor may, from time to time with respect to principal outstanding on which a Base Interest Rate is not accruing, and on the expiration of any Interest Period with respect to principal outstanding on which a Base Interest Rate has been accruing, select an index offered by Bank for a Base Interest Rate Loan and an Interest Period by telephoning an authorized lending officer of Bank located at the banking office identified below prior to 10:00 a.m., Pacific time, on any Business Day and advising that officer of the selected index, the Interest Period and the Origination Date selected (which Origination Date, for a Base Interest Rate Loan based on the LIBOR Rate, shall follow the date of such selection by no more than two (2) Business Days).

Bank will mail a written confirmation of the terms of the selection to Debtor promptly after the selection is made. Failure to send such confirmation shall not affect Bank's rights to collect interest at the rate selected. If, on the date of the selection, the index selected is unavailable for any reason, the selection shall be void. Bank reserves the right to fund the principal from any source of funds notwithstanding any Base Interest Rate selected by Debtor.

**(b) VARIABLE INTEREST RATE.** All principal outstanding hereunder which is not bearing interest at a Base Interest Rate shall bear interest at a rate per annum of one-half percent (00.5%) less than the Reference Rate, which rate shall vary as and when the Reference Rate changes.

At any time prior to the maturity date of this note, subject to the provisions of paragraph 4 below, Debtor may borrow, repay and reborrow hereunder so long as the total outstanding at any one time does not exceed the principal amount of this note.

Debtor shall pay all amounts due under this note in lawful money of the United States at Bank's P.O. Box 30115, Los Angeles, CA 90030-0115 Office, or such other office as may be designated by Bank, from time to time.

**2. LATE PAYMENTS.** If any payment required by the terms of this note shall remain unpaid ten days after same is due, at the option of Bank, Debtor shall pay a fee of \$100 to Bank.

**3. INTEREST RATE FOLLOWING DEFAULT.** In the event of default, at the option of Bank, and, to the extent permitted by law, interest shall be payable on the outstanding principal under this note at a per annum rate equal to five percent (5%) in excess of the interest rate specified in paragraph 1.b, above, calculated from the date of default until all amounts payable under this note are paid in full.

**4. PREPAYMENT.**

**(a)** Amounts outstanding under this note bearing interest at a rate based on the Reference Rate may be prepaid in whole or in part at any time, without penalty or premium. Debtor may prepay amounts outstanding under this note bearing interest at a Base Interest Rate in whole or in part provided Debtor has given Bank not less than five (5) Business Days prior written notice of Debtor's intention to make such prepayment and pays to Bank the prepayment fee due as a result. The prepayment fee shall also be paid, if Bank, for any other reason, including acceleration or foreclosure, receives all or any portion of principal bearing interest at a Base Interest Rate prior to its scheduled payment date. The prepayment fee shall be an amount equal to the present value of the product of: (i) the difference (but not less than zero) between (a) the Base Interest Rate applicable to the principal amount which is being prepaid, and (b) the return which Bank could obtain if it used the amount of such prepayment of principal to purchase at bid price regularly quoted securities issued by the United States having a maturity date most closely coinciding with the

relevant Base Rate Maturity Date and such securities were held by Bank until the relevant Base Rate Maturity Date ("Yield Rate"); (ii) a fraction, the numerator of which is the number of days in the period between the date of prepayment and the relevant Base Rate Maturity Date and the denominator of which is 365; and (iii) the amount of the principal so prepaid (except in the event that principal payments are required and have been made as scheduled under the terms of the Base Interest Rate Loan being prepaid, then an amount equal to the lesser of (A) the amount prepaid or (B) 50% of the sum of (1) the amount prepaid and (2) the amount of principal scheduled under the terms of the Base Interest Rate Loan being prepaid to be outstanding at the relevant Base Rate Maturity Date). Present value under this note is determined by discounting the above product to present value using the Yield Rate as the annual discount factor.

(b) In no event shall Bank be obligated to make any payment or refund to Debtor, nor shall Debtor be entitled to any setoff or other claim against Bank, should the return which Bank could obtain under this prepayment formula exceed the interest that Bank would have received if no prepayment had occurred. All prepayments shall include payment of accrued interest on the principal amount so prepaid and shall be applied to payment of interest before application to principal. A determination by Bank as to the prepayment fee amount, if any, shall be conclusive.

(c) Bank shall provide Debtor a statement of the amount payable on account of prepayment. Debtor acknowledges that (i) Bank establishes a Base Interest Rate upon the understanding that it apply to the Base Interest Rate Loan for the entire interest period, and (ii) Bank would not lend to Debtor without Debtor's express agreement to pay Bank the prepayment fee described above.

(d) If Debtor has entered into an Interest Rate Hedge, Debtor acknowledges and agrees that (i) Bank (or its affiliate) has the right, but not the obligation, under the Swap Documents (defined below) governing such Interest Rate Hedge, to compel an early termination, in full or in part, of such Interest Rate Hedge as a result of any unscheduled prepayment under this note, (ii) any such early termination may result in payment obligations (which may be substantial in amount) being owed by Debtor to Bank (or any affiliate of Bank) as early termination, close-out or settlement amounts, which amounts shall be determined in accordance with the Swap Documents governing such Interest Rate Hedge and shall be in addition to any prepayment fee and other charges specified herein, and (iii) if such full or partial early termination of the Interest Rate Hedge results in an amount owing by Bank or its affiliate to Debtor, then Bank may in its discretion apply such amount to prepayment of principal hereunder, together with accrued interest on such principal and any resulting prepayment fee. Debtor further acknowledges and agrees that neither Bank nor any of its affiliates is under any obligation to enter into Interest Rate Hedges with Debtor and that such Interest Rate Hedges will be governed by documentation separate from this note.

DEBTOR INITIAL HERE: JHC GEF \_\_\_\_\_

5. **DEFAULT AND ACCELERATION OF TIME FOR PAYMENT.** The occurrence of any of the following shall constitute a default (a) Debtor shall default in the due and punctual payment of the principal of or the interest on the note or any of the Loan Documents (as such term is defined in that certain Loan Agreement dated as of February 26, 2013 as which may from time to time be amended ("Loan Agreement")) and such default shall continue for a period of three (3) business days; provided, however, that no grace period shall apply to any payment default at maturity, following acceleration or in connection with a prepayment hereunder; (b) other than a payment default under paragraph 5(a), above, Debtor shall default in any material respect in the due performance or

observance of any covenant or condition of the Loan Documents and such default shall not have been cured by Debtor before the expiration of fifteen (15) days after the date of the default; (c) there shall have occurred a Change In Control (as defined in the Loan Agreement); (d) the insolvency of Debtor or the failure of Debtor to generally pay Debtor's debts as such debts become due, subject to applicable grace or cure periods; (e) the commencement by Debtor of any voluntary proceeding under any laws relating to bankruptcy, insolvency, reorganization, dissolution, general assignment for the benefit of creditors, debt adjustment, debtor relief, or appointment of a receiver, trustee, custodian or similar official for all or substantially all of Debtor's property; (f) the commencement against Debtor of any involuntary proceeding under any laws relating to bankruptcy, insolvency, reorganization, general assignment for the benefit of creditors, debt adjustment, debtor relief, or appointment of a receiver, trustee, custodian or similar official for all or substantially all of Debtor's property and any such proceeding is not dismissed within ninety (90) days after commencement; (g) the failure by Debtor to comply in any respect with any order, judgment, injunction, decree, writ or demand of any court or other public authority where such failure would result in a material adverse change in, or a material adverse effect upon, the operations, assets, performance, business, properties, or condition (financial or otherwise) of Debtor such that Debtor's ability to perform under any Loan Document is materially impaired; or (h) the default by Debtor or any Guarantor for any obligation exceeding One Million Dollars (\$1,000,000) concerning the borrowing of money, which default enables the obligee to accelerate the entire amount due. Upon the occurrence of any such default, Bank, in its discretion, may cease to advance funds hereunder and may declare all obligations under this note immediately due and payable; however, upon the occurrence of an event of default under (e), all principal and interest shall automatically become immediately due and payable.

**6. ADDITIONAL AGREEMENTS OF DEBTOR.** If any amounts owing under this note are not paid when due, Debtor promises to pay all costs and expenses, including reasonable attorneys' fees, (including the allocated costs of Bank's in-house counsel and legal staff) incurred by Bank in the negotiation, documentation and modification of this note and all related documents and in the collection or enforcement of any amount outstanding hereunder. Debtor and any Obligor, for the maximum period of time and the full extent permitted by law, (a) waive diligence, presentment, demand, notice of nonpayment, protest, notice of protest, and notice of every kind; (b) waive the right to assert the defense of any statute of limitations to any debt or obligation hereunder; and (c) consent to renewals and extensions of time for the payment of any amounts due under this note. If this note is signed by more than one party, the term "Debtor" includes each of the undersigned and any successors in interest thereof; all of whose liability shall be joint and several. Any married person who signs this note agrees that recourse may be had against the separate property of that person for any obligations hereunder. The receipt of any check or other item of payment by Bank, at its option, shall not be considered a payment on account until such check or other item of payment is honored when presented for payment at the drawee bank. Bank may delay the credit of such payment based upon Bank's schedule of funds availability, and interest under this note shall accrue until the funds are deemed collected. In any action brought under or arising out of this note, Debtor and any Obligor, including their successors and assigns, hereby consent to the jurisdiction of any competent court within the State of California, as provided in any alternative dispute resolution agreement executed between Debtor and Bank, and consent to service of process by any means authorized by said state's law. The term "Bank" includes, without limitation, any holder of this note. This note shall be construed in accordance with and governed by the laws of the State of California. This note hereby incorporates any alternative dispute resolution agreement previously, concurrently or hereafter executed between Debtor and Bank, other than any such provision contained in a Swap Document.

**7. DEFINITIONS.** As used herein, the following terms shall have the meanings respectively set forth below: "**Base Interest Rate**" means a rate of interest based on the LIBOR Rate. "**Base**

**Interest Rate Loan** means amounts outstanding under this note that bear interest at a Base Interest Rate. **Base Rate Maturity Date** means the last day of the Interest Period with respect to principal outstanding under a Base Interest Rate Loan. **Business Day** means a day on which Bank is open for business for the funding of corporate loans, and, with respect to the rate of interest based on the LIBOR Rate, on which dealings in U.S. dollar deposits are carried out in the London interbank market. **Interest Period** means with respect to funds bearing interest at a rate based on the LIBOR Rate, any calendar period of 1, 2, 3, 6 or 12 months. In determining an Interest Period, a month means a period that starts on one Business Day in a month and ends on and includes the day preceding the numerically corresponding day in the next month. For any month in which there is no such numerically corresponding day, then as to that month, such day shall be deemed to be the last calendar day of such month. Any Interest Period which would otherwise end on a non-Business Day shall end on the first succeeding Business Day unless that day falls in a new calendar month, in which event such Interest Period shall end on the next preceding Business Day. **Interest Rate Hedge** means any interest rate swap, forward swap or swaption, or interest rate cap or collar transaction now or hereafter entered into between Debtor and Bank or any affiliate of Bank for purposes of hedging or mitigating, fully or partially, interest rate risk under this note. **LIBOR Rate** means, for any specified Interest Period, a per annum rate of interest determined by Bank as equal to the rate for deposits in US Dollars for a period comparable to the Interest Period which appears on the Reuters Screen LIBOR 01 Page (or any replacement or successor page or service) as of 11:00 a.m., London time, on the day that is two (2) Business Days preceding the first day of such Interest Period. **Origination Date** means the first day of the Interest Period. **Reference Rate** means the rate announced by Bank from time to time at its corporate headquarters as its Reference Rate. The Reference Rate is an index rate determined by Bank from time to time as a means of pricing certain extensions of credit and is neither directly tied to any external rate of interest or index nor necessarily the lowest rate of interest charged by Bank at any given time.

**DEBTOR:**

Autobytel Inc., a Delaware corporation

By: /s/ Jeffrey H. Coats  
Jeffrey H. Coats, President and C.E.O.

By: /s/ Glenn E. Fuller  
Glenn E. Fuller, E.V.P., Chief Legal/Admin Off,  
Sec.

